

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN § 3:21-CV-00259-DCG-JES-JVB
AMERICAN CITIZENS, ET AL §
§
V. § 8:59 A.M. TO 10:49 A.M.
§
GREG ABBOTT, IN HIS §
OFFICIAL CAPACITY AS §
GOVERNOR OF THE STATE OF §
TEXAS, ET AL § JANUARY 28, 2022

HEARING ON MOTION FOR PRELIMINARY INJUNCTION
AS TO SENATE DISTRICT 10
BEFORE THE HONORABLE DAVID C. GUADERRAMA,
HONORABLE JERRY E. SMITH
AND HONORABLE JEFFREY V. BROWN
VOLUME 8 (AM SESSION) OF 9 VOLUMES

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VOLUME 8
(HEARING ON MOTION FOR PRELIMINARY INJUNCTION
AS TO SENATE DISTRICT 10)

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1

PROCEEDINGS

2

(Call to order of the Court.)

3

JUDGE GUADERRAMA: Good morning, everyone.

4

Please be seated.

08:59:06

5

All right, Mr. Sweeten.

6

MR. SWEETEN: Thank you, Your Honor.

7

Your Honor, Mr. Dunn and I had a chance to talk last night about the exhibits; and I know that the Court has conditionally admitted them on both sides.

08:59:20

10

We have come to an agreement. The agreement is the State will withdraw its objections to their exhibits. They will -- except for Exhibit 102, which the State maintains its foundation and hearsay and relevance objections.

11

12

13

14

08:59:39

15

And in turn, the plaintiffs have withdrawn their objections to all 70 of the defendants' exhibits. So I wanted to let the record know -- I mean, let the Court know for the record and also move for the admission now, not just conditionally, but move for the admission of all 70 of the State's defendants' exhibits.

16

17

18

19

08:59:57

20

21

JUDGE GUADERRAMA: All right. All those exhibits are admitted with the exception of 102, which will be taken up; is that correct, Mr. Dunn?

22

23

24

09:00:09

25

MR. DUNN: Yes, Your Honor. And just by way of response, we continue to believe that 102 is both relevant

1 and the Court can consider it for the reasons that I
2 argued during Senator Huffman's testimony; but we would
3 also move 1 through 106 of the plaintiffs' Brooks exhibits
4 subject to the 102 issue.

09:00:25

5 JUDGE GUADERRAMA: All right. Those will be
6 admitted, as well.

09:00:39

7 MR. SWEETEN: Your Honor, so this morning we are
8 going to start by playing the video deposition of Bruce
9 Sherbet. We will then have Staci Decker testify after
10 that. And then, at that point, the State will rest its
11 case.

12 **BRUCE SHERBET,**
13 having been first duly sworn, testified via videotape, as
14 follows:

15 **DIRECT EXAMINATION**

16 OFFERED BY MR. SWEETEN:

17 **Q.** Just starting off with some background information,
18 could you just tell me what you do for a living?

19 **A.** I'm the Collin County Elections Administrator.

09:00:55

20 **Q.** And how long have you been in that position?

21 **A.** I have been in this position for six years.

22 **Q.** Can you briefly describe what you do on a day-to-day
23 basis as the elections administrator?

09:01:11

24 **A.** Well, it's pretty much A to Z of the election
25 processes. So we oversee voter registration for Collin

1 County. I'm over the voting equipment, warehouse, the
2 early-oting processes, the training of election judges and
3 clerks.

09:01:30

4 All of the materials that are used in the election,
5 all the way from the beginning to the end, basically, of
6 the election processes are under the charge of the
7 elections administrator.

09:01:47

8 **Q.** And as part of your role, do you communicate with
9 election officials in other counties or at the Secretary
10 of State's office?

11 **A.** Yes, I do.

12 **Q.** Does your office communicate with voters as far as the
13 elections process?

14 **A.** Quite a bit, yes.

09:01:56

15 **Q.** Is the Collin County Elections Office large or small
16 compared to similar election offices in other counties?

17 **A.** Of the 254 counties in Texas, Collin County is the
18 sixth-largest. We have about 670,000 registered voters.

09:02:23

19 **Q.** Have you held a similar job in other counties in
20 Texas?

21 **A.** Yes.

22 **Q.** Where is that?

23 **A.** Well, I started in elections -- well, I started in
24 Dallas County in 1976, when I was 19 years of age.

09:02:38

25 In 1980, I became the voter registration supervisor

1 for Dallas County. The next four years I was the
2 supervisor of voter registration.

3 Then in '84 to '87, I became the Assistant Elections
4 Administrator for Dallas County.

09:02:57

5 And from 1987 to 2011, I was the Elections
6 Administrator of Dallas County. I left in 2011, and I
7 retired with 34 years' service with the County.

09:03:20

8 And for two years I worked with the Elections Center,
9 which is a national organization that represents
10 elections, basically; and I helped them with some training
11 curriculum for their certification courses, actually
12 developed some and taught the courses for two years.

09:03:42

13 And in late 2013, Ellis County contacted me because
14 they knew I was an elections administrator; and they asked
15 if I would help them get through the primaries of 2014. I
16 did, still living in Richardson, driving an hour and a
17 half a day. But I did that for two years.

18 And then Collin County opened up, and I took this
19 position I currently have December of '15.

09:04:00

20 **Q.** Are you a member of any professional associations or
21 similar groups for election administrators?

22 **A.** Yes, I am. I'm a member of the Election Center. I'm
23 certified, CERA certified, which is an acknowledgment, you
24 know, that you have gone through a lot of courses through
25 that organization.

09:04:22

1 IGO, International Government Officials Association,
2 another election organization nationwide -- actually,
3 international with that one.

4 And also I'm a member of the Texas Association of
5 Elections Administrators.

09:04:37

6 **Q.** So have you learned about election administration in
7 counties other than Collin County as part of your
8 experience?

9 **A.** Yes. I'd say it's been an interesting journey in the
10 sense that I've conducted elections for 24 years for the
11 second-largest jurisdiction in Texas, six years for the
12 sixth-largest.

09:04:52

13 And then Ellis County was relatively small compared to
14 some of the larger jurisdictions. We had about 100,000
15 registered voters.

09:05:11

16 So I've had hands-on experience with smaller, medium,
17 and very large counties.

18 **Q.** Do you have personal knowledge about how changes to
19 election procedures and schedules can affect county
20 administration as well as voters?

09:05:24

21 **A.** Well, it can; and it depends, really, how much lead
22 time is allowed for those changes. You know, in our last
23 legislative session and in special sessions, there have
24 been some election law changes that have affected our
25 operations and our processes.

09:05:43

1 So there's a lot of "it depends," I guess, in my
2 answer. It depends on the amount of time that's allowed
3 for those changes to take place and the amount of training
4 and education that goes along with not just from the
5 administrative side but also educating the voters,
6 candidates, and others about changes.

09:06:01

7 **Q.** Well, I can appreciate that, and I want to get into
8 the details of that in a minute. But for the moment, I
9 just meant to ask: Do you have personal knowledge about
10 those topics?

09:06:18

11 **A.** Yes, I do.

12 **Q.** So what I have sent to you and you've then received is
13 Exhibit 1 of this deposition, which is Defendants' Exhibit
14 54 for the preliminary injunction hearing.

09:06:29

15 Can you see the title of this exhibit?

16 **A.** Yes.

17 **Q.** Does it say "Declaration of Bruce Sherbet"?

18 **A.** Yes, it does.

19 **Q.** Is this declaration a declaration that you submitted
20 and signed in this case?

09:06:46

21 **A.** Yes, it is.

22 **Q.** And does it accurately reflect your knowledge and
23 beliefs as they pertain to this case?

24 **A.** Yes, it does.

09:07:03

25 **Q.** In Paragraph 5 of your declaration you mentioned,

1 quote, months of preparation to conduct a primary election
2 in Texas.

3 Could you briefly describe the preparation you were
4 talking about?

09:07:21

5 **A.** Preparation begins with first getting, through the
6 parties, the names of the people who have filed to run.
7 They provide all that information to us. We code the
8 election. We will proof the election. The parties proof
9 the election.

09:07:51

10 After they sign off on it, then we have to begin
11 testing all the equipment -- and there are, like,
12 thousands of pieces of equipment that we do test -- and
13 perform a series of internal and external, what we call,
14 logic and accuracy tests.

09:08:09

15 And that's just getting to the point where you start
16 the process; and that means mailing out ballots to voters
17 that request them, getting everybody prepared for the
18 polling places.

09:08:25

19 It generally takes a couple of months from start to
20 finish just to get to that point.

21 **Q.** And has the preparation for the primary election
22 already begun?

23 **A.** Oh, most definitely, yes.

09:08:40

24 **Q.** Can you describe some of the major activities that the
25 Collin County Elections Administration Office has already

1 taken?

2 **A.** Well, we first had to redistrict before we even got
3 into the preparation of the primaries. So I guess I need
4 to ask: Are you needing to know from the point where we
5 start at ground zero or to include information about what
6 we had to do with our voter registration files to be ready
7 for the election?

8 **Q.** Yes. I think, please feel free to include that in
9 your answer.

10 **A.** Okay. So what we -- at redistricting, you know, the
11 legislature had two special sessions. We did -- we didn't
12 get our redistricted information from the State until
13 late, obviously, because they were still working on it
14 through the special session.

15 We also have overpopulated precincts. So going into
16 an even year you, by state law, can't have over 5,000
17 registered voters in any given voting precinct. Collin
18 County had 14 of those that we identified that we had to
19 split up because they were overpopulated.

20 So we have two phases of redistricting. We had Phase
21 1, which was just to ready ourself for the other changes
22 that come from the State and County, actually the maps.

23 So our GIS department receives the maps first. I
24 can't remember exactly when; but it was probably sometime
25 in September, October when they got them. They do their

1 work on it, provide us the shade files and the maps so
2 that we can go into our voter registration database and
3 literally start moving voters to the redistricted
4 precincts.

09:10:28

5 We get that accomplished. For the primary election,
6 we had to do that before we even started the preparations,
7 getting the equipment readied, getting our ballots
8 started, which is what I explained that we got -- I think
9 our commissioners on November 1st passed their

09:10:48

10 redistricted precincts, commissioner and JP.

11 We had the information given to us by our GIS
12 department, and we went through the process. It took
13 about a month on our end to go through and change all of
14 our records, our files.

09:11:06

15 On top of that, for an even year, we also have to mail
16 everyone a new voter registration certificate. Those
17 normally get mailed out on December 5th by state law
18 requirements. We just started mailing them this week,
19 basically, because things got delayed so much in the

09:11:24

20 process.

21 So you get everything ready to mail out your voter
22 certificates, and then it goes back to what I said a few
23 minutes ago. That's when we start meeting with the
24 parties, entering into a contract of services before we do
25 anything with both parties.

09:11:42

1 In Collin County, we don't hold a joint primary, but
2 we contract to do both parties' primaries. The thing that
3 they do that we pass over to them, basically, just about,
4 is they pay their judges and clerks for election day. We
09:12:01 5 do all the early-voting processes and election day
6 processes, in fact; but it's not a true joint primary like
7 the law allows for.

8 So the process takes about a month and a half once you
9 start it, from start to finish; and we started mailing
09:12:19 10 ballots on January 15th for all the overseas military
11 people that requested ballots.

12 We've received probably around, now, probably close to
13 750 applications for mail ballots. We expect that to
14 somehow be close to 5,000, maybe even more, before it's
09:12:44 15 all said and done. There are a lot of state mail-outs,
16 candidates, campaigns, parties.

17 So we're completely in the middle of the process now.
18 We've mailed out ballots. We've mailed out voter
19 certificates.

09:12:57 20 We are training this week on forms. Then we go next
21 week into labs for our workers to come in to get their
22 training. And then followed by our in-person, hands-on
23 training that we do for election law and procedures for
24 early voting and election day.

09:13:14 25 We're also securing the polling places for those

1 primary elections, and we're probably 99 percent secured
2 on that. We still have a few that we're trying to lock
3 in.

09:13:33

4 And so the ballot board will be probably meeting
5 starting in a few weeks to start processing mail ballots
6 and auditing the daily report forms that come from the
7 locations.

09:13:49

8 **Q.** Thank you, Mr. Sherbet. I want to bring your
9 attention to Exhibit Number 2 that you have received
10 through the chat feature. It is entitled "Election
11 Advisory Number 2021-18."

12 Do you know what this document is?

13 **A.** Yes, I do.

14 **Q.** What is it?

09:14:02

15 **A.** It's the election law calendar that the State puts
16 out; and they put these out before every election, major
17 election, the primaries, the city school districts, the
18 November elections.

09:14:18

19 And it's really the template that takes all of the
20 critical dates and recommended dates that the State has
21 provided for us to complete the statutory-required duties;
22 and also best practices are included in there when they
23 suggest to start your testing of equipment or when they
24 suggest you, you know, get with your parties to contract
25 for the elections and sign everything over, suggestions on

09:14:42

1 logic and accuracy testing, postings of election notices,
2 orders of election.

09:15:00

3 It's really -- it's really a calendar of events that
4 lays out everything that we're supposed to be doing for
5 that specific election that's identified on it.

6 **Q.** Mr. Sherbet, under Saturday, November 13th, this
7 Exhibit 2 says, "First day to file an application for a
8 place on the primary ballot." What does that mean?

09:15:18

9 **A.** That is the first day that candidates can actually
10 apply for -- for the ballot. There is a time period
11 specified by state law that gives a beginning date where
12 filing is allowed and a close date where it's the end of
13 filing period.

09:15:37

14 **Q.** And if you flip two pages further in the exhibit,
15 you'll see that, I think, that the close is December 13th.
16 Is December 13th when the candidate filing period closes?

17 **A.** Yes. That's correct, yes.

18 **Q.** Now, if you flip forward a few more pages, you'll see
19 the note for Saturday, January 1st. Can you see that?

09:16:01

20 **A.** I'm getting there. Hang on one second. I see it,
21 yes.

22 **Q.** And it says, "First day for voters to submit a regular
23 application for ballot by mail for an election in 2022."

09:16:23

24 So could you explain what that is and how it's
25 affected you?

1 **A.** Well, for requesting mail ballots, it's on an annual
2 basis, January 1, December 31st. So that's the very first
3 day that a person wanting to vote in elections this cycle
4 can request a ballot, an absentee or vote-by-mail ballot.

09:16:47

5 **Q.** Has Collin County, in fact, received those
6 applications?

7 **A.** We've received about 750 so far. We think we're going
8 to end up with about 5,000 by the time it ends.

09:17:06

9 **Q.** How long, roughly, does it take Collin County to send
10 out a mail ballot after it receives a request?

09:17:31

11 **A.** It can vary. It will normally take two to three days
12 once everything is in high gear. We could've sent out
13 ballots, for example, if we got them on January 1st. We
14 didn't even have the ballot signed off and completed at
15 that time. That didn't happen until a little bit later.
16 We mailed out ballots starting January 15. So that gives
17 you an idea of it took two weeks to get going.

09:17:54

18 Now that we're in the process, it's a two-to-three-day
19 turnaround. We had some complications this time because
20 of some new legislation under Senate Bill 1 that has
21 required us to use a different kind of procedure and
22 people applying to vote to add additional information.

09:18:17

23 So we're having some challenges on -- and delays, I
24 guess I would say, just because of those new requirements
25 for probably, in Collin County, maybe 10 percent of those

1 requests are going to have some extra steps needed.

2 **Q.** Is your administrative role in the voting-by-mail
3 process more complicated this election cycle than in other
4 election cycles because of the factor you just mentioned
09:18:38 5 related to new legislation?

6 **A.** I think -- I think the answer is absolutely. Not just
7 yes, but absolutely. And I -- I -- if we want to go over,
8 like, even some of the new legislation, it's not just
9 changes in absentee-by-mail processes; but there are a lot
09:18:55 10 of forms that changed, assisting voter forms, poll-watcher
11 requirements, and additional duties.

12 We've got to -- we've had to redo our envelopes, for
13 example, is another one of those things.

14 So this one was compounded in a couple of different
09:19:15 15 ways. We've had a shorter period of time because of
16 delays in getting all of our mapping and everything done
17 on that end.

18 Law changes have required us to order additional
19 forms; and some of the challenges with that -- and they
09:19:30 20 have been pretty significant -- there is supply shortages.
21 There is paper shortages. We're still waiting for
22 envelopes for some of the regular mail ballot processes
23 because they're not available. They're just delayed
24 because of supply-chain issues and paper shortages.

09:19:52 25 So you take the new laws; you take we're behind

1 schedule on getting redistricting done; and we're behind
2 schedule on getting voter cards mailed out, which just
3 started this week.

09:20:07 4 And we've had two special elections this month in
5 Collin County, the second-largest and third-largest city.
6 McKinney, on the 15th, I held a special election; and on
7 the 29th, I had a special election for Frisco.

8 So we've got a lot of moving parts that aren't
9 normally in play in most years, even years. This one,
09:20:28 10 because of the things I have mentioned, have added some
11 new dynamics and challenges to what we do.

12 **Q.** You mentioned sending out mail ballots on
13 January 15th. Was that a discretionary choice for Collin
14 County, or was that required by law?

09:20:43 15 **A.** Well, it's a federal law requirement that we have to
16 mail out ballots 45 days before, and that -- that applies
17 across the line for these elections. That's -- that's a
18 hard date.

19 And if you don't make that date, there could be all
09:20:59 20 kinds of other repercussions or challenges with that. So
21 every county does everything possible to meet that 45-day
22 mail-out.

23 **Q.** We've talked a bit about voting by mail, but there is
24 also voting in person. Is Collin County preparing for
09:21:17 25 in-person voting to begin?

1 **A.** We are and that's -- that's being accomplished in
2 several different ways. We're securing polling places.
3 We're almost completely done on that. We still have a
4 few.

09:21:30 5 And we also are getting our workers lined up. Under
6 state law the County is fully responsible for overseeing
7 and handling all the early-voting processes, cost-wise and
8 everything else.

09:21:47 9 So we are getting our workers lined up. We've started
10 training this week. We have three different kinds of
11 curriculums for training for our workers that they need to
12 see.

09:22:05 13 And we're also getting our packets ready, our supplies
14 for each precinct. And that -- that includes getting
15 ballots ready. That includes getting all the forms and
16 all the things that are necessary for posting and
17 qualifying voters in the locations.

18 We're full steam ahead doing all of those processes
19 right now.

09:22:20 20 **Q.** Has your office had to increase its staffing to
21 accomplish all of these goals?

22 **A.** We have had to, and we always have. This year adds a
23 unique challenge, and that's the workforce. We had
24 requested our HR department with the County to provide us
09:22:39 25 with 40 temporary employees. Those employees are used in

1 multiple areas. They're used for phone banks. They are
2 used for entering voter registration applications or
3 assisting with mail-ballot processes. Of the 40 we
4 requested, I think we have about seven that they have been
5 able to identify and provide us.

09:22:58

6 So we are short-staffed and we know that and we've had
7 to make allowances for that, meaning work some extended
8 hours, maybe some weekend work, especially going forward
9 now, and even reached out to our election workers to see
10 if any of them wanted to come in early and help us with
11 some of these other functions before early voting begins.

09:23:18

12 That's a challenge we weren't expecting; and I can
13 tell you it's one that would make someone in my position
14 nervous because you need all hands on deck, especially
15 when you are going into a big election year like we're
16 facing.

09:23:35

17 **Q.** Based on your experience, would it be feasible to
18 change the districts at this point in time for the
19 March 1st primary?

09:23:49

20 **A.** In my experience of doing this, it would be very
21 problematic and really confusing, I have a feeling, for
22 voters because we've already started mailing out ballots.
23 We have already posted ballots on our website. We have
24 already started securing the equipment and preparing it
25 for testing.

09:24:17

1 And to start over, as I had said a few minutes ago
2 going over the timelines, it took about a month to get to
3 this part. We're just barely a month -- a little bit over
4 a month away from the elections.

09:24:30

5 So I don't -- I don't know how it could be feasible
6 from the stance of the voting equipment especially. We
7 could mail corrected ballots, possibly, after we
8 redistrict; and I think there would be a question of how
9 extensive and what are we talking about in terms of those
10 changes.

09:24:49

11 It's not easy to give a direct answer except for I
12 personally don't see how we could, in the middle of the
13 stream right now, train going down the track full speed,
14 regroup and try to change up the ballot, change up voter
15 registration records, recode equipment, and be ready for
16 early voting that begins on the 14th of February.

09:25:07

17 I -- I don't like ever saying impossible, but I can
18 say improbable to be able to do it and especially without
19 some significant challenges in that process.

09:25:25

20 **Q.** In your experience, are some voters confused by things
21 like corrected ballots?

22 **A.** We've had to do it before when there's been errors or
23 things that have required us to do it. We had -- we had
24 to do it during the presidential election cycle because
25 courts added a third party. I think they added a

09:25:44

1 Libertarian Party for some office to the ballot after we
2 had already mailed out some ballots. So we had to go in
3 and make that change. That was just strictly a ballot
4 change, and it did cause confusion.

09:26:03

5 And here is what will happen sometimes. Voters may
6 get the second corrected ballot, and they are notified in
7 that mailing that this is a corrected ballot. They'll
8 sometimes just mail the first ballot in and not even pay
9 attention to the corrected ballot, for whatever reason.

09:26:21

10 Maybe they think I have already voted, I don't care, or
11 that correction didn't mean anything to them. It wasn't
12 an office, in other words, they cared about.

09:26:37

13 So I can tell you it can be confusing. I'm not saying
14 every single voter that gets a corrected ballot is sitting
15 there confused looking at it, but it does cause confusion.

09:26:56

16 You have to keep in mind one thing, too, is --
17 especially if we're talking absentee by mail -- we're not
18 talking the majority of these voters being younger. We're
19 talking the majority of these voters they're over 65, over
20 75, 85 and sometimes over 95. And so things -- small
21 things can be more confusing than it would be for other
22 people.

09:27:13

23 So we -- we have the gamut of all kinds of voters and
24 ones that are maybe more attuned and educated versus some
25 that are confused and maybe not knowing what to do.

1 **Q.** If a Court ordered a delay in the March 1st primary,
2 which you've said there are already votes being cast in,
3 what consequences would you expect to see?

4 **A.** I think it's going to be a situation where there
5 definitely will be confusion. If you -- if you take an
6 election that's already full steam ahead and we're already
7 mailing out hundreds of ballots and we're already mailing
8 new voter cards to everyone with their district
9 information on there, so there's going to be a confusion.

10 And you hope that everyone would be watching the news
11 feeds or being -- look at what is going on, but they are
12 not going to be always.

13 And so if you delay an election that's already fully
14 in process, I don't see how it can't cause some confusion;
15 and to what level, I'm not sure. It depends on the
16 circumstances of the delay, how much time is allowed for
17 that delay, how much work is involved with it.

18 If there's a delay because of changing lines, how
19 significant that is will amortize to be how confusing and
20 difficult it will be to even accomplish a postponement.

21 I would have to know the details of it more to give a
22 definitive "this is exactly what is going to happen," but
23 I can tell you it's going to be problematic. If you're in
24 the middle of a process and you're literally a couple of
25 weeks, three weeks or so, from starting your voting

1 process to say, stop, stop the presses, take everything
2 back, mail notices to those people you mailed ballots out,
3 don't mail that ballot back in because it doesn't count,
4 to try to reshuffle and get everybody ready for another
09:29:17 5 election is really a problem to begin with.

6 You've got to realize one thing on these election
7 years, the even years, especially the midterms, those
8 ballots are bigger than even a presidential year because
9 you have a lot of courts and other things on there that
09:29:35 10 aren't on those ballots that there's just a lot of
11 processes going on.

12 And if you're making those kinds of changes on a very
13 fast order, it just -- you have two elections already in
14 May scheduled. You have -- you have the May city school
09:29:54 15 districts. I think it's on the 7th. You've got the
16 primary runoff elections on the 24th, I think it is.
17 You've got the runoffs from the city school district
18 elections in June.

19 You really have overlapping elections to begin with;
09:30:08 20 and it is confusing, just by the nature of so many
21 elections on voters. Voters are, like, every time I turn
22 around you're holding another election or I may have to be
23 at a different polling place, or whatever the challenges
24 may be in some of those counties.

09:30:23 25 It just would be a very complex, problematic situation

1 would be how I would try to phrase it without having more
2 specific details.

09:30:41

3 **Q.** In Paragraph 4 of your declaration you said that you
4 were offering this declaration to provide the Court with
5 information. Is there any additional information you want
6 to provide the Court with at this time?

09:31:05

7 **A.** You know, I think we've covered some of that; and it's
8 just understanding the mechanics, the logistics that are
9 on election officials in these very -- these even years,
10 these overlapping elections, these short timeframes to get
11 things accomplished.

09:31:19

12 We're programming -- right now I'm holding an election
13 for Frisco. I'm holding the election for them. They are
14 voting today. I'm -- I'm right now preparing voting
15 equipment for the primary. I'm already overlapping
16 elections.

09:31:35

17 So when you start adding more complexities to that
18 process, I can guarantee you that there are going to be
19 challenges; and to what degree, I don't know because it
20 depends on the specifics.

09:31:52

21 So just getting the message across that even in a
22 perfect-world situation as an elections administrator --
23 I've done it for over 35 years -- in a perfect-world
24 situation it's very difficult to navigate through these
25 years just because of statutory timelines and requirements

1 for us. To add other elements to that, it just
2 exponentially could impact and maybe cause issues that
3 wouldn't have happened if that had not occurred.

4 **Q.** Thank you, Mr. Sherbet.

09:32:21

5 (Videotaped testimony of Bruce Sherbet concluded.)

6 **MR. SWEETEN:** Your Honors, that concludes the
7 Sherbet clips.

09:32:36

8 We now are going to put up -- we're calling Staci
9 Decker through videotape. The videotape last 33 minutes
10 and 58 seconds. Both plaintiffs' and defendants' clips
11 are in this, and the direct examination is conducted by
12 Kathleen Hunker.

13 **STACI DECKER,**
14 having been duly sworn, testified via videotape, as
15 follows:

16 **DIRECT EXAMINATION**

17 OFFERED BY MS. HUNKER:

18 **Q.** Can you please state and spell your name for the
19 record.

09:32:47

20 **A.** It's Staci L. Decker. S-t-a-c-i, L., Decker,
21 D-e-c-k-e-r.

22 **Q.** What is your educational background?

23 **A.** High school diploma, some college, pretty much it.

24 **Q.** What is your current employer and job title?

09:33:06

25 **A.** I'm currently the Elections Administrator for Kendall

1 County.

2 **Q.** And how long have you worked in that role?

3 **A.** I have been the administrator since 2011. I have
4 worked in the elections office since 2008.

09:33:18

5 **Q.** Were you the Elections Administrator for Kendall
6 County in 2012 when the elections were delayed as a result
7 of redistricting?

8 **A.** I was, yes.

09:33:29

9 **Q.** And so you have first-hand knowledge on how changes in
10 the election schedule could impact counties and voters; is
11 that correct?

12 **A.** That's correct.

13 **Q.** What did you do prior to becoming Elections
14 Administrator?

09:33:38

15 **A.** I worked for three years as the deputy, the chief
16 deputy for the Elections Administrator; and that was after
17 the office was created in 2008.

18 Prior to that, I worked in the tax
19 assessor-collector's office. I handled motor vehicle and
20 voter registration.

09:33:52

21 **Q.** And how long have you worked for the Tax Assessor's
22 Office?

23 **A.** I was in that office for five years.

24 **Q.** So all totaled, you have nearly 14 years' experience
25 with Texas elections; is that correct?

09:34:03

1 **A.** Correct.

2 **Q.** And you have nearly 20 years' experience in Kendall
3 County government; is that correct?

4 **A.** That's correct.

09:34:09 5 **Q.** What are your current responsibilities?

6 **A.** I currently oversee and administer elections and voter
7 registration for all of Kendall County.

8 **Q.** In your role as Elections Administrator, do you
9 regularly communicate with other government officials in
10 Texas?

11 **A.** I do. We -- I am part of a regional group and part of
12 the Association of Elections Administrators.

13 **Q.** Which officials do you interact with?

14 **A.** Primarily election administrators, county clerks, and
09:34:33 15 tax assessors that handle voter registration or elections.

16 **Q.** So does this include officials in political
17 subdivisions?

18 **A.** Yes, it does.

19 **Q.** And does it also -- does it also include election
09:34:44 20 officers in other counties?

21 **A.** That's correct, yes.

22 **Q.** And how frequently do you communicate with them?

23 **A.** Most elections administrators commute on a weekly
24 basis. Our local political subdivisions, it depends on
09:34:58 25 the timeframe for their elections. Right now it's quite a

1 bit.

2 **Q.** Do you attend conferences, seminars and trainings
3 about election administration?

4 **A.** Yes, I do.

09:35:06 5 **Q.** Are these seminars and trainings attended by other
6 county election administrators?

7 **A.** Yes, they are.

8 **Q.** At these seminars and trainings is there an
9 opportunity for counties to ask questions and voice
09:35:18 10 concerns?

11 **A.** Yes.

12 **Q.** Are you a member of any professional association or
13 group related to elections?

14 **A.** I am a member of the Texas Association of Elections
09:35:28 15 Administrators, and I'm also a member of the Election
16 Center.

17 **Q.** Can you please tell me about the purpose of these
18 organizations.

19 **A.** The purpose of the Texas Association of Elections
09:35:39 20 Administrators is an opportunity for those who handle
21 voter registration and elections to get together to talk
22 about commonalities between their counties, to discuss
23 issues relating to legislation, to county budget issues,
24 general operation of elections, and voter registration.

09:36:00 25 **Q.** Has membership in these organizations given you

1 familiarity with respect to how other counties administer
2 their elections?

3 **A.** Yes, it has.

09:36:11

4 **Q.** Has it given you familiarity with the challenges these
5 counties may face?

6 **A.** Yes, it does.

7 **Q.** How large is your elections department?

8 **A.** My elections department is a staff of four, including
9 myself.

09:36:20

10 **Q.** And how many full-time workers?

11 **A.** Four full-time workers. That includes myself.

12 **Q.** Is that typical for a Texas county?

09:36:38

13 **A.** For a county our size, it's not; but the quantity of
14 workers across the counties just differs depending on the
15 size of their county and, really, the financial, I guess,
16 responsibilities of those counties if they have the money
17 to well staff, which most elections offices are not well
18 staffed.

09:36:55

19 **Q.** Compared to other counties in Texas, would yours be
20 smaller or larger than the average?

21 **A.** Sorry. We are smaller than the majority of counties.

22 **Q.** How many people live in Kendall County?

23 **A.** We have a population of nearly 45,000 with about
24 35,000 of those registered to vote.

09:37:12

25 **Q.** Ms. Decker, I'm going to introduce our first exhibit

1 for the day, which I have labeled Exhibit 1. Can you
2 please take a moment to look it over.

3 **A.** Yes.

4 **Q.** Do you recognize this document?

09:37:24

5 **A.** I do.

6 **Q.** Is this the declaration that you submitted for this
7 case?

8 **A.** Yes. This is the declaration I submitted.

09:37:44

9 **Q.** Can you please turn to the last page. Is that your
10 signature?

11 **A.** Yes. That's my signature.

12 **Q.** Does this declaration contain a summary of your
13 opinions?

14 **A.** Yes, it does.

09:37:49

15 **Q.** Do you agree with the statements contained therein?

16 **A.** I do.

17 **Q.** Are the statements accurate?

18 **A.** Yes, they are.

09:38:00

19 **Q.** All right. Please look to Paragraph 4. You state,
20 "Each election in Texas takes months of careful
21 preparation."

22 Can you please explain what you mean there?

23 **A.** Putting together an election, we typically start
24 between five to seven months prior to election date.

09:38:13

25 That's working with entities. That's working with our

1 facilities, trying to secure buildings for use for
2 election day, working with poll workers. Everything that
3 goes up into building an election is done during that
4 timeframe.

09:38:28

5 **Q.** When did you start preparing for the March 1st
6 primary?

7 **A.** For the March 1st primary we started our preparations
8 in October.

09:38:46

9 **Q.** What has Kendall County done to date regarding the
10 March primary?

09:39:02

11 **A.** Okay. So we have -- we have already done our
12 programing. We have signed off on our ballot proofs. We
13 have ordered all the supplies for the election. We have
14 prepared the election-day kits. We have prepped for our
15 ballot-by-mail mail-outs. We have done a lot of the
16 general administrative duties kind of related to prepping
17 the election kits, prepping the forms and things that our
18 judges would need to sign, prepping for training,
19 scheduling, our polling locations and the use of their
20 building, sending out the contracts for those. I believe
21 that's pretty much it so far.

09:39:22

22 **Q.** Do you consider the election to already be ongoing?

23 **A.** I do.

09:39:40

24 **Q.** Are you familiar with the election calendar published
25 by the Texas Secretary of State's office?

1 **A.** Yes.

2 **Q.** In your words, what is the election calendar?

3 **A.** The election calendar is our timeline for the
4 preparation of any election. It shows the deadlines that

09:39:52

5 we must meet that are hard, firm deadlines, as well as
6 keeps us on a successful journey to election day.

7 **Q.** Have many of the deadlines for the March 2022 primary
8 already passed?

9 **A.** Many of the key deadlines in regards to ballot

09:40:11

10 programming, sending out ballots, and a lot of the
11 preparation that has to be done on the parties' side, our
12 local parties' side has been done, yes.

13 **Q.** And are there any upcoming deadlines?

14 **A.** There are plenty of upcoming deadlines, yes.

09:40:30

15 **Q.** Would you consider those deadlines fast approaching?

16 **A.** Yes, I do.

17 **Q.** Ms. Decker, I'm going to introduce our next exhibit,
18 which I have labeled Exhibit 2. Can you please take a
19 second to look it over. Can you tell me what it is?

09:40:44

20 **A.** This is the election law calendar for the March 1st
21 primary and the subsequent May 24th runoff election.

22 **Q.** Okay. Can you please turn to page Decker 00018.

23 You'll notice the numbers on the bottom. Do you see where
24 it says "Calendar of Events"?

09:41:08

25 **A.** Yes.

1 Q. And do you see where it says "Saturday, November 13th,
2 2021"?

3 A. I do.

4 Q. What is the significance of this date?

09:41:17 5 A. This is the first day to apply for a ballot by mail
6 for the primary -- I'm sorry -- to apply for a place on
7 the ballot for the primary election.

8 Q. Is this what we typically call the candidate filing
9 period?

09:41:32 10 A. That is correct. That's the beginning of the
11 candidate filing period.

12 Q. And how long does the candidate filing period last?

13 A. Thirty days.

14 Q. Has the filing period ended in this election?

09:41:42 15 A. It has ended, yes.

16 Q. I want to now turn to Page 20. I'm sorry. I mean 22.
17 Do you see where it reads "Thursday, December 23rd,
18 2021"?

19 A. I do.

09:42:19 20 Q. Can you please tell me the significance of this
21 deadline?

22 A. So this is the deadline for the county chair or their
23 designee to conduct the ballot drawing for the March 1st
24 primary.

09:42:29 25 Q. Can you please tell me: What is a candidate drawing?

1 **A.** A candidate drawing is where the party or their
2 designee draws for a ballot order of the candidates to go
3 onto the ballot, and that prepares the official ballot.

09:42:51

4 **Q.** Is the county chair obligated to post notice before
5 conducting the drawing?

6 **A.** Yes, they are.

7 **Q.** How long before the drawing are they required to post
8 notice?

9 **A.** I believe that is 24 hours prior to the deadline.

09:43:00

10 **Q.** Is the ballot order drawing unique to a primary
11 election?

12 **A.** No, it's not.

13 **Q.** Is there anything that sets a primary apart from other
14 elections?

09:43:11

15 **A.** There are many things that would set it apart. The
16 conduct of the election is very similar to other
17 elections. Some of the deadlines will be slightly
18 different from other elections.

09:43:32

19 **Q.** Is it run by your office or is it run in conjunction
20 with any other office?

21 **A.** The primary elections in Kendall County are run by our
22 office because the entities or the parties choose to
23 contract with us, which they are under no obligation to
24 do.

09:43:43

25 **Q.** Okay. Does the fact that it's a primary impact your

1 workload as compared to a general election?

2 **A.** The workload is very similar to our general election
3 in most even-numbered years. So the workload has
4 increased due to other extenuating circumstances; but as
5 far as the primary, no, it has not.

09:44:08

6 **Q.** Can you explain to me what those extenuating
7 circumstances are?

8 **A.** Yes. So with the primary election you have your same
9 deadlines that you would for every primary year.

09:44:23

10 Unfortunately, this year was a redistricting year; and
11 with everything that was delayed from the Census Bureau,
12 counties received their information much later in order to
13 make changes to their redistrict -- or to redistrict their
14 boundaries.

09:44:39

15 So the deadlines kind of pushed a little bit harder on
16 us to turn those around and get people registered in the
17 correct voting precincts, their correct districts that
18 would be associated with their residential address.

19 **Q.** Ms. Decker, we're going to jump to the top of Page 24.
20 Do you see where it says "Saturday, January 15th, 2022"?

09:45:00

21 **A.** Yes, I do.

22 **Q.** What is the significance of this date?

23 **A.** This is the military and overseas; you'll have a
24 mailing deadline. We have a deadline of 45 days prior to
25 election to mail out military and overseas ballots to

09:45:18

1 anybody who has requested them.

2 **Q.** Is this deadline discretionary?

3 **A.** No, it's not.

4 **Q.** From the candidate drawing on December 23rd to the
09:45:31 5 January 15th deadline, what actions did your office have
6 to take to get the ballots ready to be mailed?

7 **A.** After the ballot drawing was done, we had to work with
8 our vendor to program our media and input all of the
9 candidate information, as well as the propositions that
09:45:49 10 would be on some of the ballots, and get that submitted,
11 as well as mail any type of media that we had that needed
12 to be programmed to our vendor.

13 **Q.** That seems like a tight deadline. Is it a struggle to
14 get everything you need to get done?

09:46:06 15 **A.** Yes, it is.

16 **Q.** Is it harder for you in a small county to meet the
17 deadline?

18 **A.** Yes, it is.

19 **Q.** Can voters still submit an application to vote by
09:46:17 20 mail?

21 **A.** Yes, they can.

22 **Q.** Will you be mailing out ballots to these voters once
23 their applications are received?

24 **A.** Yes, we will.

09:46:24 25 **Q.** And what is the turnaround time between when you

1 receive a ballot -- excuse me -- receive an application to
2 vote by mail and sending out a ballot?

3 **A.** Our office policy is within 24 to 48 hours we will
4 send out the ballot once the application was received.

09:46:38 5 **Q.** When does in-person voting start for the primary?

6 **A.** In-person voting starts February 14th.

7 **Q.** How is the County preparing for in-person voting?

8 **A.** Right now we are working with our election workers to
9 schedule them for training, to schedule them to work the
09:46:59 10 early-voting period, as well as working with our election
11 judges and the clerks that they have chosen to work
12 election day. Those are the major preps right now because
13 we do need to make sure everybody is scheduled for
14 training.

09:47:13 15 And we're also working with our -- with our facility
16 on prepping the areas for voting, and those are -- those
17 are really the big things that we're working on right now.

18 **Q.** What is logic and accuracy testing?

19 **A.** Logic and accuracy testing is required to be done on
09:47:32 20 your voting equipment prior to the use of it in an
21 election.

22 **Q.** And how long does logic and accuracy testing take?

23 **A.** For a county our size it could take potentially 48 to
24 72 hours, depending on the size of the ballot.

09:47:47 25 **Q.** And does the time it takes correspond to the size of

1 the county?

2 **A.** It does, yes.

3 **Q.** Have you started your logic and accuracy testing?

09:48:01

4 **A.** We are -- we have not started our logic and accuracy
5 testing yet.

6 **Q.** If the maps were redrawn, what work would have to be
7 redone?

8 **A.** We would have to reprogram our media.

09:48:20

9 We would have to reschedule the hundred or so election
10 workers for training.

11 We would have to contact all of the workers that are
12 going to be working early voting for us and get their new
13 schedules of availability.

09:48:39

14 We would potentially have to redraw, depending on if
15 that was a district that was on our ballot. And then that
16 would start the whole -- that would start programming all
17 over again from the -- from the ground back up.

09:49:04

18 And then we would have to redo a lot of our
19 chain-of-custody forms, our access logs, and our master
20 log of all the seals and serials that we use with the
21 updated information.

22 **Q.** In light of all the responsibilities you've just
23 described, would you have time to restart the process and
24 conduct a new election for the projected --

09:49:20

25 **A.** No, we would not.

1 Q. Would you have time to fulfill your responsibilities
2 by the March 1st primary if you needed to restart an
3 election?

4 A. No, we would not.

09:49:33 5 Q. Ms. Decker, let's go back to Exhibit 1, which was your
6 declaration. If you could please turn to Page 5 -- or
7 Paragraph 5. Can you please read it.

8 A. "The fact that this is a redistricting year adds
9 another layer of responsibilities to Kendall County's
09:50:00 10 already jam-packed election calendar."

11 Q. Can you please explain: How does this being a
12 redistricting year add more responsibilities to your
13 office?

14 A. With redistricting we are required, once those
09:50:13 15 boundaries are set -- so there's a lot that goes into
16 setting the boundaries at your local level. Once those
17 boundaries are set, then our office is responsible, as the
18 voter registrar's office, to change every voter into the
19 new district that they have fallen into.

09:50:30 20 Q. Must you update voter information into your records?

21 A. We -- we must, yes.

22 Q. I'm going to rephrase. Do you have to update voter
23 information in your records?

24 A. We do.

09:50:40 25 Q. How labor-intensive is this process?

1 **A.** It's extremely labor-intensive. With the system that
2 we use now, we do have to go range by range, street by
3 street in our voter registration street database to change
4 all of them to their new voting precinct, their new
09:50:57 5 commissioner precincts and any districts that have changed
6 within their street.

7 **Q.** Has your office needed to hire outside help?

8 **A.** We have.

9 **Q.** What type of outside help did you have to hire?

09:51:07 10 **A.** We hired temp employees to help us with some of our
11 office duties, as well as working with our redistricting.

12 **Q.** Do you usually have to hire additional help to
13 complete your redistricting responsibilities?

14 **A.** We do not.

09:51:22 15 **Q.** Why did you have to this year?

16 **A.** Our boundaries for Kendall County changed drastically.
17 We have experienced extreme amount of growth in our
18 county. We are one of the faster-growing counties in the
19 state of Texas.

09:51:36 20 **Q.** Was the election -- was the census data delayed?

21 **A.** It was, yes.

22 **Q.** In your experience, did the legislature redraw the
23 maps later in the year than is typical?

24 **A.** They did, yes.

09:51:54 25 **Q.** Did that also affect your ability to get the

1 information programmed in time?

2 **A.** It did, yes.

3 **Q.** Is that also one of the reasons you had to hire
4 additional help?

09:52:04

5 **A.** Yes, it is.

6 **Q.** How long did it take to update everyone's information?

7 **A.** We started updating right after our commissioner set
8 the boundaries, which would have been in mid-December; and
9 we've been working for four weeks straight trying to get

09:52:25

10 everything updated into our voters database.

11 **Q.** Did you have to put in extra hours?

12 **A.** We did, yes, weekends and nights.

13 **Q.** Did you have to work any holidays?

14 **A.** Yes, we did.

09:52:36

15 **Q.** Do you think you'd be able to input the information
16 faster than you did in the last few weeks?

17 **A.** I do not.

18 **Q.** If the Court were to change district lines, would you
19 have to re-input voter information?

09:52:50

20 **A.** Yes, we would.

21 **Q.** Could you do so before the March 1st primary?

22 **A.** No, we cannot.

23 **Q.** What happens once voters' information has been
24 uploaded into the database?

09:53:01

25 **A.** After everything has been uploaded into the database,

1 then counties are responsible for conducting their mass
2 mail-outs, which is sending voter registration
3 certificates to everybody that is an active registered
4 voter in the county.

09:53:13

5 **Q.** What is a voter registration certificate?

09:53:27

6 **A.** A voter registration certificate is the certificate
7 that is sent to you by your local voter registrar. On
8 that certificate it lists the voter's name, their mailing
9 address, their residence address, the precincts that they
10 are assigned to, as well as the up to ten districts that
11 they -- their address is associated with.

12 **Q.** And how do voter registration certificates help
13 voters?

09:53:43

14 **A.** Those provide voters an opportunity to learn their new
15 districts so that they can research candidates who are
16 running for those districts.

17 **Q.** Is the mail-out an expensive undertaking?

18 **A.** It is. It's very expensive.

09:53:58

19 **Q.** Do you have an estimate of how much it costs Kendall
20 County?

21 **A.** Our mail-out was approximately \$14,000.

22 **Q.** Has Kendall County issued voter registration
23 certificates to voters?

24 **A.** We have not issued our certificates as of yet.

09:54:09

25 **Q.** When do you plan on doing so?

1 **A.** We expect ours to go out in the mail next week.

2 **Q.** If the Court were to change district lines, would your
3 office have to recreate voter registration certificates?

4 **A.** Yes, they would.

09:54:24 5 **Q.** Does your office have the money for such an expense?

6 **A.** We do not.

7 **Q.** In your opinion, would issuing a second registration
8 certificate confuse voters?

9 **A.** It would be very confusing for voters.

09:54:37 10 **Q.** Can you explain how?

11 **A.** Voters, when they receive two certificates, they're
12 unaware of which one is the valid certificate. And unless
13 they contact our office, they're left to try to decipher
14 which certificate is their valid certificate.

09:54:56 15 **Q.** Ms. Decker, I want to draw your attention to
16 Paragraph 15 of your declaration. Can you please read it
17 out loud.

18 **A.** "I am also deeply concerned that if the Court were to
19 postpone the March 2022 primary, that it would severely
09:55:17 20 undermine the elections office's ability to oversee a
21 successful election."

22 **Q.** Do you agree with this statement?

23 **A.** I do agree.

24 **Q.** All right. Ms. Decker, I'm going to introduce our
09:55:30 25 third exhibit for the day. Can you please take a moment

1 to look it over. Can you please tell me what this is?

2 **A.** This is the May 7th election law calendar.

3 **Q.** Is this similar to the calendar we looked at earlier?

4 **A.** Very similar, yes.

09:55:50 5 **Q.** What are some of the differences in it?

6 **A.** The differences will be the conduct of the elections
7 for party elections versus your general elections for
8 local political subdivisions, as well as this will outline
9 the processes for our constitutional amendment election

09:56:04 10 that will be a statewide election.

11 **Q.** What can you tell the Court about the May 7th, 2022,
12 election?

13 **A.** Our May 7th, 2022, election would typically be a
14 smaller election because there were two bills that were
09:56:21 15 passed that created two propositions that needed -- sorry,
16 two amendments, constitutional amendments, that needed to
17 appear on the next general election or the next uniform
18 date, which would be May 7th. Our election went from a
19 much smaller election to a countywide election.

09:56:40 20 **Q.** What is your role with respect to conducting the May
21 election?

22 **A.** We are here -- as elections administrators we are
23 responsible for accepting contracts to any entity that
24 requests to contract for their election.

09:56:55 25 **Q.** Have you already received requests from local cities

1 and political subdivisions?

2 **A.** Yes, I have.

3 **Q.** You mentioned there were statewide propositions on the
4 ballot. How does that affect how the election is
09:57:11 5 conducted?

6 **A.** As far as how the election is conducted, we will have
7 to increase the number of polling locations. We'll have
8 to increase the number of equipment that's used; also the
9 quantity of poll workers. So it does add a lot of extra
09:57:25 10 responsibilities on the May uniform date.

11 **Q.** And when does work begin on that election?

12 **A.** Work has already begun on that election. We started
13 back in December.

14 **Q.** Would a change to the primary election schedule cause
09:57:43 15 an impact on the May 7th election?

16 **A.** Depending on when that date would be set for that
17 election, yes, it would.

18 **Q.** Could you please explain?

19 **A.** In 2012 we had the election pushed to -- the primary
09:57:55 20 election was pushed behind the May uniform election date.
21 That caused some issues for our voters in our county and
22 our office.

23 If we're pushed to prior to that election, we would
24 still run into a lot of the same -- a lot of similar
09:58:14 25 issues in regards to finding polling locations and then

1 making sure we had adequate-enough staff to handle that
2 size of an election.

3 **Q.** So just to make sure I'm clear, changing the election
4 date would mean you'd have to get new polling locations?

09:58:33

5 **A.** It could potentially mean that we have to get new
6 polling locations.

7 **Q.** Would it change the schedule prior to the -- let me
8 rephrase the question.

09:58:50

9 If the primary pushed back to late May, would you have
10 problems turning your equipment around?

11 **A.** We would. There is a hold on your equipment. It's a
12 ten-day hold to turn around your equipment from one
13 election to the next.

09:59:04

14 **Q.** And what is -- what is entailed to turn around
15 equipment?

09:59:18

16 **A.** Well, you'd have to have the quantity of equipment,
17 first and foremost, for that size of an election. You
18 would have to request a waiver from the Secretary of
19 State's office to reuse that equipment in a shorter
20 timeframe than the ten-day period.

21 **Q.** What are the consequences of not being able to turn
22 your equipment around in time?

09:59:32

23 **A.** Essentially, it would be the success of your election.
24 If you cannot turn your equipment around, you do not have
25 equipment for voters to vote on, which means you do not

1 have a successful voting period.

2 **Q.** Because of the length of time it takes you to turn
3 around the equipment, would you have to reduce the number
4 of polling locations available during the primary?

09:59:48

5 **A.** We would. And we would have to consider reducing the
6 number of polling locations for our May 7th election, as
7 well.

8 **Q.** Can you please explain why?

10:00:00

9 **A.** We wouldn't have enough equipment, one, to turn it
10 around; and the timeframe for doing your logic and
11 accuracy testing, as well as all of the public tests that
12 are required to be done in regards to the election
13 equipment, we would have to be doing all of that during
14 the timeframe of -- during the voting period for the
15 May 7th election.

10:00:17

16 **Q.** How does being a small county affect your ability to
17 transition between two closely timed elections?

18 **A.** Well, there is budgetary constraints with the smaller
19 counties. A lot of counties are already underbudgeted for
20 what we really need.

10:00:32

21 And the time to turn it around, some of the issues
22 that we've run into more lately is office staff out with
23 COVID during this pandemic and just the general workload
24 of possible moving dates.

10:00:52

25 **Q.** We've already established that you were an elections

1 administrator in 2012 when the courts postponed the
2 primary election to late May. Did you observe any
3 negative consequences from moving the election?

4 **A.** We did. We had issues with our ballot by mail.

10:01:07 5 We had complaints from voters. Voters were frustrated
6 because they were coming in for one election, turning
7 around two to three weeks later coming in for another
8 election.

9 And it did push back our runoff election closer to the
10:01:23 10 November uniform date, which did make it a little bit more
11 difficult to prepare the November election.

12 **Q.** Did you observe any voter confusion?

13 **A.** I did.

14 **Q.** What type of voter confusion?

10:01:35 15 **A.** We had voter confusion with in-person voting. People
16 would see our flyers for one election with different
17 locations than the election they were here to vote on.

18 We had issues with ballot by mail. Voters were
19 receiving two ballots in a similar timeframe for the May
10:01:55 20 uniform date as well as the May primary election.

21 And one of the biggest issues we had with ballot by
22 mail were voters were returning their ballots back in the
23 wrong envelopes. The envelope is required to state the
24 date of that election so you know when it comes back what
10:02:11 25 election it is held for. And they were putting their

1 uniform election date -- their May local election ballots
2 in their primary and swapping the two of them.

3 **Q.** Did this type of error result in ballots being
4 disqualified?

10:02:31 5 **A.** It did, yes.

6 **Q.** And were voters confused about when they should submit
7 their ballots?

8 **A.** They were.

9 **Q.** How did you know?

10:02:41 10 **A.** I'm sorry?

11 **Q.** How did you know that voters were confused about when
12 to submit their ballots?

13 **A.** We had complaints from voters. We had a lot of phone
14 calls from our military and overseas voters because they
15 did experience some issues with that, as well. And then
16 our general domestic ballot-by-mail voters, we had some
17 phone calls from them. They were very confused.

18 **Q.** In your experience, did moving the election result in
19 some voters being disenfranchised?

10:03:11 20 **A.** Yes, it did.

21 **Q.** Based on your observation, were certain voters more
22 susceptible than others to this type of
23 disenfranchisement?

24 **A.** I would say our ballot-by-mail voters were more
10:03:23 25 susceptible.

1 Q. And who qualifies for vote by mail?

2 A. The four qualifying reasons we have are those voters
3 that are 65 years of age and older, voters that are
4 disabled, voters that are expected absent from the county,
10:03:38 5 and voters that are confined in jail.

6 Q. Did you notice that -- let me strike that.

7 What challenges did postponing the primary in 2012
8 pose to Kendall County Elections Department?

9 A. It put a strain on our office staff. We had a very
10:04:02 10 difficult time finding poll workers to work that May
11 primary election, as it was near the Memorial Day weekend,
12 which made it very difficult to staff for early voting and
13 staff for election day.

14 Those are -- a lot of the biggest issues were finding
10:04:22 15 people to work. It wasn't necessarily in the preparation
16 of our election because those follow strict timelines.
17 But it was things that come close to that voting period
18 beginning that caused the most issues.

19 Q. In your estimation, would it be more difficult or less
10:04:40 20 difficult for your office to adapt to a delayed primary
21 this year than in 2012?

22 A. It would be much more difficult for my county.

23 Q. What sets this year apart from 2012?

24 A. The size of our redistricting for Kendall County.

10:04:57 25 Q. Do you think COVID-19 had any impact on your ability?

1 **A.** It definitely did. We've experienced issues with our
2 own office staff not being able to be at work. We've
3 experienced issues and concerns from our poll workers not
4 wanting to work. And it's made it extremely difficult to
5 staff what we already have.

10:05:16

6 **Q.** You also mentioned earlier that the May election was
7 larger this year?

8 **A.** That's correct.

9 **Q.** How does having a larger election affect your ability
10 to adapt to a new primary date?

10:05:31

11 **A.** Having a larger election requires money that we -- the
12 County has not particularly budgeted for. It requires a
13 larger quantity of poll workers to be hired for that
14 election. It requires more time for training for that
15 election. And it will increase the size and the quantity
16 of our mail-outs for those elections.

10:05:52

17 **Q.** In your estimation, would the administration of the
18 March primary election be negatively impacted by a delay
19 or change to the maps at this stage?

10:06:10

20 **A.** I -- I agree. I don't think that we can do that at
21 this point.

22 **Q.** Do you consider the March primary to have already
23 begun?

24 **A.** I do, yes.

10:06:21

25 **Q.** Will postponing the March primary undermine your

1 ability to conduct the election successfully?

2 **A.** It will, yes.

3 **Q.** Would any change to the election calendar at this late
4 date undermine your ability to conduct the election?

10:06:33 5 **A.** Yes, it would.

6 **Q.** Based on your experience in 2012 and based on your
7 14-year tenure with the Kendall County Elections
8 Department, would postponing the March primary increase
9 voter confusion?

10:06:43 10 **A.** Yes, it would.

11 **Q.** In your opinion, would postponing the March primary
12 harm voters?

13 **A.** Yes.

14 (Videotaped testimony of Staci Decker concluded.)

10:06:58 15 MR. SWEETEN: Your Honors, that concludes the
16 videotape of Ms. Decker.

17 The State at this time rests --

18 JUDGE GUADERRAMA: All right. Thank you.

19 MR. SWEETEN: -- subject to rebuttal.

10:07:11 20 MR. DUNN: Your Honors, at this time we call
21 Dr. Barreto on rebuttal. And for the Courts' reference,
22 his rebuttal report is Brooks Exhibit 100. He is here.

23 JUDGE GUADERRAMA: Okay. Good morning, Doctor.
24 You remain under oath.

10:08:57 25 THE WITNESS: Okay. Thank you, sir.

1 **MATTHEW A. BARRETO, Ph.D,**
2 having been previously duly sworn, further testified as
3 follows:

4 **REBUTTAL DIRECT EXAMINATION**

5 BY MR. DUNN:

6 **Q.** For the record, please restate your name.

7 **A.** My name is Matthew A. Barreto.

8 **Q.** All right. Dr. Barreto, I just want to spend a second
9 on your qualifications. We talked during your original
10 direct testimony you had some 70-plus publications; is
11 that true?

12 **A.** Yes. That's right.

13 **Q.** And what would you say is the percentage of your
14 publications that focus on racial and ethnic voting
15 patterns?

16 **A.** Almost every single one focuses on racial or ethnic
17 voting patterns or perhaps public opinion underlying those
18 voting patterns. It is my primary area of research since
19 my doctoral dissertation.

10:09:41 20 **Q.** Now, do you just develop opinions based upon your
21 thoughts, or do you follow some data? Or tell us how you
22 reach your opinions generally.

23 **A.** Yeah. We try to stay pretty close to the scientific
24 method in that we develop questions, review the
10:09:55 25 literature, different theories that are there; then gather

1 the best available and most accurate data and then use
2 that data to test our questions. And, oftentimes, you
3 don't know what the answer will be going in. That's why
4 you test the data, test your hypotheses, and then
5 summarize your results.

10:10:12

6 **Q.** You prepared a rebuttal report in this case; is that
7 true?

8 **A.** Yes, I did.

9 **Q.** It should be on the screen -- I believe you may have a
10 copy -- as Brooks Exhibit 100. Starting first with the
11 declaration that accompanied your report, can you see the
12 date that it was submitted?

10:10:21

13 **A.** Yes. January 19th, 2022.

14 **Q.** Was this submitted before you had access to
15 Dr. Alford's dataset?

10:10:35

16 **A.** Yes. That's correct.

17 **Q.** Turning to the first page of your report, you start by
18 identifying some of Dr. Alford's criticism of your earlier
19 report; is that right?

10:10:49

20 **A.** That's correct.

21 **Q.** Describe that criticism for us, please.

22 **A.** Well, his main contention was that I did not consider
23 Democratic primary elections and that looking at
24 Democratic primary elections might reveal different
25 information about cohesiveness. That was his overarching

10:11:05

1 point, I believe, in response to my data on racially
2 polarized voting.

3 **Q.** Had you considered primary elections in your original
4 analysis?

10:11:20 5 **A.** I had not analyzed primary elections. Certainly when
6 I set out to do my report, I considered if they were
7 relevant. As you probably heard me say many times a few
8 days ago, I did not think they were relevant.

9 **Q.** Why not?

10:11:34 10 **A.** Well, in this case we are not attempting to answer the
11 question: Is a Democratic-performing district blocking
12 Black and Hispanic voters from getting their candidate of
13 choice?

14 In other inquiries, I believe the one that Mr. Gaber
10:11:52 15 discussed in Wisconsin, that's the exact inquiry: Is a
16 Democratic-performing district keeping the minority
17 population so low that they are not able to ultimately get
18 their candidate to emerge, which would ultimately win in
19 November?

10:12:08 20 In this case, it's no longer a Democratic-performing
21 district. It is a district that has -- had been
22 performing Democratic under the benchmark map and was
23 changed. And so the question is one about the partisan
24 elections in November that ultimately decide the
10:12:25 25 candidate.

1 Because that's the inquiry, those general elections
2 are the ones that are directly relevant to looking at
3 minority cohesiveness.

10:12:38

4 **Q.** So in response to Dr. Alford's criticism, did you then
5 look at primary elections?

6 **A.** I did.

7 **Q.** And tell us what analysis you undertook.

10:12:51

8 **A.** Well, I looked at the primary elections that concerned
9 one of the districts that he was most concerned with,
10 which was Congressional District 33. I confined my
11 analysis just to the Tarrant County portion of
12 Congressional District 33 because the Dallas County
13 portion would not be relevant in this case.

10:13:10

14 **Q.** Can you tell what Dr. Alford did in terms of using
15 Dallas and Tarrant?

10:13:30

16 **A.** In his report he merely references other analysis that
17 he has done. He does not talk about any new data analysis
18 done for this case of Congressional District 33; and my
19 understanding of his testimony yesterday was that he did
20 previously analyze the entirety of Congressional District
21 33, which would include large portions in Dallas County,
22 as well.

10:13:44

23 **Q.** Now, did you -- we'll come back to Congressional
24 District 33 when we get to the tables and data on the
25 following page; but for this part of the report, did you

1 also look at this primary election that Dr. Alford focused
2 in on?

3 **A.** Yes, I did, in Senate District 10 in 2014.

4 **Q.** And what did you conclude from analyzing that
5 election?

6 **A.** Well, the first thing that I concluded was that it was
7 not relevant. The reason is that it is a very small
8 subset of the voters who ultimately go to vote in Senate
9 District 10. The Democratic primary --

10 **Q.** Let me pause you there. How do you know that? How do
11 you know it's a small subset?

12 **A.** Well, we are only looking at votes cast in the
13 Democratic primary, and those are lower voter turnout
14 elections.

15 **Q.** Substantially lower?

16 **A.** Substantially lower. I believe in an example
17 yesterday Mr. Gaber and Dr. Alford were looking at a
18 precinct that only had 143 votes out of 5,000 individual
19 eligible voters.

20 So these Democratic primary elections are
21 substantially lower in turnout, and they are only
22 Democrats. It doesn't include Independents. It doesn't
23 include Republicans. It doesn't include people who maybe
24 are just deciding to come and vote for the first time and
25 maybe aren't even registered in the primary. We know a

1 lot of people get more excited in the general and only
2 first become a registered voter.

3 So these primary elections are a very small subset and
4 are not reflective of the overall voting patterns in that
10:15:12 5 district.

6 **Q.** If you wanted to reach a conclusion about the
7 primaries, would you want to analyze more than one?

8 **A.** Well, certainly if you had set out to offer a
9 conclusion about primaries, you would probably try to
10:15:25 10 analyze as many as possible. Just analyzing one, it could
11 be an outlier. It may not be representative of all
12 primaries in that district.

13 **Q.** Now, in Paragraph 5 you continue to talk about your
14 analysis of Congressional District 33. What was that?

10:15:45 15 **A.** Well, Congressional District 33 is the one I was
16 referring to earlier where Dr. Alford referenced in his
17 report that his conclusion was that Black and Hispanic
18 voters were not cohesive. I took issue with that. And so
19 I picked a couple of key elections, two elections from
10:16:05 20 Congressional District 33, and reanalyzed those to
21 determine if Black and Hispanic voters were cohesive.

22 **Q.** And what did your -- what was your conclusion?

23 **A.** Well, my conclusion was that Black and Hispanic voters
24 are, in fact, cohesive in Tarrant County during the Mark
10:16:26 25 Veasey elections. And I analyzed a primary election that

1 featured a Hispanic candidate versus an African-American
2 candidate. And I also analyzed that same Hispanic
3 candidate running then in the general election.

10:16:42

4 And the analysis across those two elections reveals
5 two things:

6 First of all, that Mr. Veasey is quite popular with
7 Hispanic voters. He overwhelmingly wins their support in
8 Tarrant County in general elections. He is certainly the
9 candidate of choice.

10:16:57

10 But secondly, even when faced with Hispanic candidates
11 in a primary, such as the 2018 primary, Mr. Veasey still
12 wins a majority of the Hispanic vote.

10:17:19

13 **Q.** On Page 2 of your report you provide some data tables.
14 Starting with Paragraph 7, what is it that you are showing
15 there?

16 **A.** Paragraph 7 is looking at the 2020 general election
17 when Mr. Veasey faced off against two Hispanic candidates,
18 Vasquez and Quintanilla. And here I analyzed the expected
19 voting patterns by race in that general election.

10:17:41

20 **Q.** What do you conclude?

21 **A.** Well, it's very clear that Mr. Veasey was the
22 overwhelming candidate of choice of Latino voters and of
23 Black voters.

10:17:59

24 That Mr. Vasquez, a Republican Hispanic candidate, was
25 the strong choice of Anglo voters; but only received about

1 21 percent of the Latino vote.

2 And a third candidate, Mr. Quintanilla, who had
3 previously run against Mr. Veasey as a Democrat, was
4 perhaps trying his hand as an Independent, received very,
10:18:18 5 very little support, only 6 percent in the Hispanic
6 community.

7 So even when faced with two Hispanic challengers,
8 Mr. Veasey was still the candidate of choice of Hispanic
9 voters

10:18:30 10 **Q.** For the clarity of the record, is it the case that the
11 Tarrant County portion of CD-33 overlaps to a significant
12 degree the minority neighborhoods in SD-10?

13 **A.** That is correct.

14 **Q.** In the benchmark?

10:18:42 15 **A.** That is correct. And that was, I believe, why
16 Dr. Alford brought this example in.

17 **Q.** All right. In Paragraph 8, what is the data you are
18 summarizing there?

19 **A.** Here I am looking on to the actual vote totals that
10:18:56 20 the candidates received in the different elections and
21 comparing how the different candidates faired in, first,
22 the primary, but then the general.

23 And so what is notable is that Mr. Veasey
24 substantially increased his performance, I would say here,
10:19:17 25 by about 46,000 votes when we get to the general election,

1 demonstrating that there are far more voters that are more
2 representative of that district in a general election.

3 In contrast, Mr. Quintanilla only increased his vote
4 count by about 200. So even though there were far more
10:19:37 5 voters, he was not picking up stronger support once the
6 full electorate was being considered in the general
7 election.

8 **Q.** All right. And then you have this critique in
9 Paragraph 9. What is that?

10:19:52 10 **A.** Well, I look even inside a primary election; and this
11 is where I look at the 2018 Democratic primary election
12 between Mr. Veasey and Mr. Quintanilla. And in this case,
13 Mr. Veasey still won an estimated 56 percent of the
14 Hispanic vote.

10:20:10 15 So while Mr. Quintanilla did receive some support,
16 Mr. Veasey was still the top finisher in the Latino
17 community, as well as in the highest concentrated Latino
18 precincts Mr. Veasey is winning those precincts.

19 What that suggests is that even when we look at
10:20:31 20 primary elections, there is no clear pattern that Black
21 and Hispanic voters are going in opposite directions. You
22 might be able to find one election here and there where
23 groups do prefer someone in their community, but it is not
24 a clear pattern at all in Tarrant County.

10:20:46 25 And I think, more importantly, that when there are

1 sometimes preferences in a primary for someone from your
2 community, when the larger community is considered in the
3 general election, we see those go away.

4 So even though there might have been some differences
10:21:01 5 of opinion, there is very strong cohesion in the general
6 election. And as I said, this question is about general
7 election performance of that district.

8 **Q.** Now, for the clarity of our record, do you understand
9 Mr. Veasey to be African-American?

10:21:18 10 **A.** That is correct.

11 **Q.** And Quintanilla to be Latino?

12 **A.** Yes.

13 **Q.** Now, on the final page of your rebuttal report, in
14 Paragraph 12, what are you addressing?

10:21:27 15 **A.** Here I am looking at --

16 **Q.** Hold on. Pause for me, if you could. We got
17 disconnected. Well, I seem not to be able to connect it.

18 MR. DUNN: If the Court has Exhibit 100,
19 Paragraph 12.

10:22:01 20 JUDGE GUADERRAMA: Yes, sir.

21 BY MR. DUNN:

22 **Q.** What is it that you are describing here, Dr. Barreto?

23 **A.** In Paragraph 12 I refer to two exhibits that were
24 forwarded to me by counsel. I believe I numbered them or
10:22:15 25 they were numbered 49 and 50, which were the ecological

1 inference analyses run by the Attorney General's office --
2 I believe I was showed this during my cross-examination a
3 few days ago -- for lots of different election contests
4 from 2012 to 2020.

10:22:33

5 **Q.** What is it you conclude about Exhibits 49 and 50?

10:22:53

6 **A.** Well, it was simply a printout of a table. There was
7 no underlying data. It included no confidence intervals.
8 It included no description of the type of ecological
9 inference model that was run. It was not clear to me if
10 Dr. Alford had run this. It was just simply a table that
11 someone had put together without any supporting
12 documentation about the methodology.

10:23:11

13 And so I was unsure how to properly assess and
14 validate it. It did not meet with, you know, my standards
15 of a report that I would be given that I could understand
16 which elections were run, which precincts, where was the
17 underlying data. All of that was absent.

10:23:29

18 **Q.** Were you here yesterday when Dr. Alford testified
19 about the origin of those printouts, Exhibits 49 and 50?

20 **A.** Yes, I was.

21 **Q.** And was it the case that Dr. Alford explained that he
22 and Dr. Stevenson prepared, you know, some kind of system
23 that was provided to the Attorney General's office and
24 used to produce that report?

10:23:44

25 **A.** That was my understanding.

1 MR. THOMPSON: Objection.

2 JUDGE GUADERRAMA: I'm sorry.

3 MR. THOMPSON: Objection. Leading, Your Honor.

4 MR. DUNN: I was just getting into the subject.

10:23:51 5 JUDGE GUADERRAMA: All right. I'll overrule your
6 objection.

7 BY MR. DUNN:

8 **Q.** What is your response to that testimony?

9 **A.** My recollection was that Dr. Alford was not certain
10:24:02 10 who wrote the software code. He believed that
11 Dr. Stevenson had a role in it.

12 He was not certain which technicians or data analysts
13 ran the code.

14 He was not certain if it was just point and click or
10:24:18 15 if someone had to actually adjust the code, which is
16 almost certainly the case.

17 And he was not certain what any of the values were set
18 at or which specific ecological models were run.

19 And this was very troubling to me, as someone who has
10:24:37 20 worked for two decades now specifically on ecological
21 inference models.

22 **Q.** Is this the sort of thing that you could build and
23 provide to another and they run at will?

24 **A.** There would need to be extensive documentation. As I
10:24:51 25 mentioned on the first day, myself and Dr. Collingwood

1 have been in development for many years of a software
2 package which we make publicly available; but it includes
3 extensive documentation, training manuals. And,
4 oftentimes, we receive extensive inquiries from end users
5 on best practices and exactly how to have the model run.

6 It's certainly the case that in each specific election
7 you run, there are a lot of parameters that need to be set
8 and troubleshooting that needs to take place to make sure
9 the data will perform.

10 **Q.** Now, when you -- you might have heard Dr. Alford
11 mention that you could have recreated those printouts if
12 you had wanted to. Do you remember him saying that
13 generally?

14 **A.** Yes.

15 **Q.** What is your response to that?

16 **A.** Well, there was no description of the methodology, nor
17 was there any underlying data. So that would have been
18 impossible. I could have gone on a fishing expedition and
19 downloaded my own data and I could have attempted to run
20 analyses in different elections. But, typically, there is
21 some sort of explanation and detail of how the models were
22 produced; and that was absent.

23 **Q.** Now, ultimately, you -- what did you produce to
24 Dr. Alford?

25 **A.** Well, in my original report we produced a full zipped

1 data file that included all of the precinct VTDs across
2 the multiple counties that were included in our analysis.

3 Every election that we analyzed was saved as a
4 separate file and included, including the racial and
10:26:40 5 ethnic demographics of all the precincts.

6 I also listed in detail that I used the eiCompare
7 software, which I know from previous cases Dr. Alford is
8 familiar with. And that has, as I just explained, an
9 extensive, perhaps 100-page long, detailed documentation
10:27:01 10 of its methodology and instructions.

11 **Q.** Now, you might recall Dr. Alford complained that you
12 gave an entire statewide dataset. Do you remember that?

13 **A.** Yes.

14 **Q.** What is your response to that?

10:27:14 15 **A.** Well, we were attempting to provide as much
16 information as possible. We were pulling data from
17 multiple counties. It wasn't just a Tarrant County
18 analysis: As SD-10 was ultimately drawn into multiple
19 counties, SD-22 was drawn into multiple counties.

10:27:33 20 And so we provided the full dataset that we drew from
21 that could then be replicated for all analyses.

22 **Q.** You also recall Dr. Alford complained about your use
23 of voting age population instead of CVAP in your analysis.
24 Do you recall that?

10:27:47 25 **A.** Yes.

1 Q. What is your response to that?

2 A. Well, first of all, all of the data we downloaded were
3 directly from the Texas Legislative Council website and
4 contained their most available data.

10:27:58

5 But as I explained, our models account for voter
6 turnout rates by race; and as a result, that allows us to
7 use VAP or CVAP or other measures as long as you are
8 counting for voter turnout by race.

10:28:24

9 In general elections, any of these measures are quite
10 correlated and quite consistent with each other.

11 Q. Other than perhaps some random anomalies, is it the
12 case that people who turn out for the election are, in
13 fact, citizens?

14 A. Yes. That's correct.

10:28:37

15 Q. Now, you also heard Dr. Alford complain about you
16 failing to produce actual EI reports. Do you remember
17 that?

18 A. A little bit.

19 Q. What is your response to that?

10:28:48

20 A. Well, we included the full set of tables and results.
21 I have multiple tables detailed in my report. I include
22 an appendix that has additional plots with confidence
23 intervals and point estimates. And so all of the
24 necessary information for any replication is included.

10:29:10

25 Q. All right. Let's talk about the dataset that you were

1 provided for Dr. Alford. What was that again?

2 **A.** I received an Excel file, I believe, last Friday.

3 **Q.** And did you request additional information after
4 reviewing that?

10:29:26

5 **A.** I did. I opened the Excel file. And it did not have
6 labels for candidates, and I had questions about where the
7 data were from. And so I just requested additional
8 documentation or a code book.

9 **Q.** And did you receive that?

10:29:43

10 **A.** Yes. I believe the next day, I think it was Saturday,
11 I was forwarded an e-mail that had a description of some
12 of the variables.

13 **Q.** Is that what Mr. Gaber referred to as a code book
14 yesterday?

10:29:58

15 **A.** Yes. I recall Mr. Gaber showed an e-mail that had a
16 list of who Candidate 1 was and who Candidate 2 was.

17 **Q.** When you got the second set of information last
18 weekend, did any additional data come with it?

19 **A.** I believe there was an attachment of a Stata file. I
10:30:17 20 had requested if there was data in any other format; and I
21 believe there was an attachment of the same dataset in a
22 Stata format, which is another software program.

23 **Q.** And you were here in the courtroom yesterday when this
24 Excel spreadsheet was pulled up by Mr. Gaber; is that
10:30:35 25 right?

1 **A.** Yes, I was.

2 **Q.** Is the data file that he pulled up the one that you
3 received?

4 **A.** Yes, the same one.

10:30:39 5 **Q.** When you went to work with the code book and that
6 dataset, did you discover an issue?

7 **A.** Yes. I think we all saw that on display yesterday.
8 The instructions that were sent appeared to have been
9 reversed. It was not clear who Candidate 1 and Candidate

10:30:57 10 2 was, which was my very first question. Normally that
11 would have been labeled "Martinez," "Willis," whichever
12 candidates are running. That's, in fact, how the data
13 comes from the TLC website, with candidate names.

14 So someone relabeled those "Candidate 1" and
10:31:12 15 "Candidate 2." And then in the code book that they sent,
16 they got those backwards. And so the initial analysis I
17 started upon, I could tell that this probably was
18 erroneous.

19 And so I ultimately went to the TLC website,
10:31:33 20 re-downloaded a new dataset, and compared it where it did
21 have those labels so that I could sort out for myself who
22 Candidate 1 and who Candidate 2 was.

23 **Q.** Were you able to replicate Dr. Alford's results?

24 **A.** I was able to run an analysis, but my results were
10:31:50 25 quite different than Dr. Alford's.

1 Q. Do you know, sitting here today, how it is he came up
2 with different results?

3 A. It's not clear at all which models were used, what
4 parameters were set, what weights were possibly used. And
10:32:06 5 so it's unclear. That information is not provided. But
6 in attempting to replicate the analysis, we get very
7 different results.

8 Q. Did you hear Dr. Alford yesterday say something to the
9 effect of "I could tell you what you need to know, and you
10:32:22 10 could run this in five minutes"?

11 A. Yes.

12 Q. Is that your experience on this analysis?

13 A. No. In particular, not with a lawyer. There might be
14 a lot more training than five minutes that is needed. But
10:32:36 15 even with a Ph.D and sophisticated user, there is
16 extensive training that goes into ecological inference;
17 and it should not be the sort of thing that you just
18 simply hand over to someone and tell them to push some
19 buttons.

10:32:52 20 You really need to have that expertise in
21 understanding precinct-level voting patterns. You need to
22 be aware of potential issues that might arise. You need
23 to know what to do when you encounter one precinct that
24 has 5,000 people and another precinct that only has 12.

10:33:11 25 There are a lot of things that we have to do when data

1 are not normally distributed. And so it does require a
2 lot of care and attention.

3 **Q.** You mentioned just now -- I don't want to go through
4 all the variables, but if you could just quantify it as a
10:33:26 5 bracket even. Are we talking about 10 or 20 or 50 things
6 you have to do when you run this?

7 **A.** Probably somewhere around 20.

8 **Q.** You mentioned weighting. We'll just cover that one.
9 What does that involve?

10:33:39 10 **A.** Well, as I mentioned, each row in that dataset, if you
11 recall seeing that dataset that Mr. Gaber had on the Excel
12 sheet, there are a lot of rows. Each row was a precinct,
13 a voting precinct.

14 And some of them and I believe one of the ones he was
10:33:53 15 looking at had over 5,300 eligible voters. If you scroll
16 down to the bottom of that dataset, some of those only had
17 114.

18 And if you don't properly account for the size of not
19 just the voting eligible population, but the number of
10:34:10 20 votes cast, you might improperly give the same
21 significance, the same weight to each row in the dataset.

22 And so you have to take care to make sure that you are
23 accounting for the total number of votes cast and also
24 looking at the votes cast through the lens of race and
10:34:29 25 ethnicity.

1 Q. Now, did you hear Dr. Alford say that using
2 partisanship as a control -- say something about using
3 partisanship as a control variable when studying
4 elections?

10:34:40 5 A. Yes. I recall that discussion.

6 Q. First, what was his critique?

7 A. His critique was that partisanship is an overwhelming
8 identification in American politics and that if we do not
9 include what he called a control variable in a model, we
10:34:58 10 can't properly understand why people vote Democrat or
11 Republican.

12 And his critique was that we should be including
13 additional control variables for partisanship because
14 that's the main predictor, not race or ethnicity.

10:35:13 15 Q. What is your response to that?

16 A. There is no documented publications that suggest when
17 you are running an ecological inference model trying to
18 understand racial voting patterns, that you would include
19 these additional control variables.

10:35:31 20 In fact, they will overexplain the model when what we
21 are trying to understand are how different racial and
22 ethnic groups vote, not how Democrats, Independents or
23 Republicans vote. We are trying to understand how do
24 Anglos, Hispanics, and Blacks vote.

10:35:49 25 Including control variables for other factors forces

1 the model to ignore racial considerations. And so because
2 of that, there is no guide, there is no suggestion that we
3 should be doing that. You only do that if you are trying
4 to explain away race and trying to get rid of a racial
5 effect.

10:36:10

6 **Q.** And what you were able to figure out about Exhibits 49
7 and 50, the Attorney General printouts of ecological
8 inference, can you tell whether it controlled for
9 partisanship?

10:36:21

10 **A.** In the exhibits that I was given that I reviewed a few
11 days ago, those appear to only be looking at race. There
12 is no notation that they control for partisanship. And,
13 in fact, in most partisan elections they conclude that
14 there is strong racial polarization, which would suggest
15 that they are not controlling for partisanship.

10:36:41

16 So nobody is advocating for that. People are
17 looking -- including variables for race and ethnicity at
18 the precinct level, but they are not including these
19 additional control variables for partisanship.

10:36:57

20 **Q.** And you recall Dr. Alford included with his report an
21 academic publication from Rene Rocha, and there was some
22 discussion about it yesterday?

23 **A.** Yes. I recall that. I read that paper very
24 carefully.

10:37:09

25 **Q.** What was Dr. Alford's claim about that publication?

1 **A.** Dr. Alford quoted a lengthy paragraph from Dr. Rocha
2 stating that Black and Hispanic coalitions were unlikely
3 and that his conclusion, based on his one primary, was
4 supported in the general literature.

10:37:28

5 **Q.** What is your response to that?

6 **A.** Well, first, it's not supported in the general
7 literature.

8 But second, in the Rocha article specifically, which
9 is from a 2001 dataset of national school boards,

10:37:47

10 Dr. Rocha concludes multiple times in that article that
11 when partisan elections are present, it encourages Black
12 and Hispanic coalitions. And in nonpartisan local school
13 board elections he finds evidence of sometimes Black and
14 Hispanic communities voting for their own candidates.

10:38:11

15 However, when even school board elections become
16 partisan, he finds evidence of Black and Hispanic
17 coalitions.

18 And then he suggests in his conclusion that other
19 partisan elections in the United States are instances in
20 which Black/Hispanic coalitions develop.

10:38:24

21 **Q.** Now, there was also discussion yesterday where
22 Dr. Alford claimed that he didn't believe Senate District
23 10 to be a majority-minority district at the moment. Do
24 you recall that?

10:38:40

25 **A.** Yes.

1 Q. And what did Dr. Alford say about the timeframe for
2 which a five-year ACS dataset applies?

3 A. First, I recall that the 2015 to 2019 ACS was, at the
4 time, the most recently available data. He suggested that
5 2017 was the midpoint of that data, but he cautioned on
6 calling it only a 2017 dataset.

7 Q. Does the Census Bureau publish on its website
8 instructions on how to use its ACS CVAP products for
9 one-year and five-year?

10 A. Yes, it does.

11 Q. And what is those -- what are those instructions?

12 A. Well, the ACS -- the Census makes very clear that the
13 one-year estimates should be considered the most current.
14 They do have a slightly smaller sample size because they
15 are only one year worth of data, but we can think of them
16 as just that year. So they are more current.

17 And the five-year data is seen as having a larger
18 sample size, and that helps us drill down to really small
19 levels of population, like a census bloc group. But it's
20 the least current. And they actually have a page where
21 they discuss looking at jurisdictions with changing
22 demographics.

23 And the Census writes that if you are observing areas
24 that have rapidly changing demographics, the five-year
25 estimates are not going to reflect that because they are

1 not the most current and one-year estimates might tell you
2 more about the current demographic makeup.

3 **Q.** Is the area in Tarrant County where Senate District 10
4 or the benchmark is located what you would call a rapidly
5 growing area?

10:40:25

6 **A.** Yes. In my original report I include specific data
7 tables about the change in population from 2010 to 2020,
8 and we concluded that the minority population was growing
9 overwhelmingly and that the White population actually

10:40:43

10 declined in Tarrant County over the decade.

11 **Q.** Now, based on your training and education and
12 experience and the data you reviewed with respect to
13 Tarrant County in Texas, what is your opinion as to
14 whether or not the benchmark Senate District 10 was
15 majority-minority CVAP at the time of the legislative
16 debates in the fall of last year?

10:40:56

17 **A.** As I said in my original report, that's something that
18 I considered and looked at. I'm extremely familiar with
19 these sort of demographic trend analyses. And as
20 stated -- I'll stick to what I stated in my original
21 report -- that it is certain to be a majority-minority
22 CVAP district today, meaning non-Anglo.

10:41:13

23 Because those population changes were occurring so
24 rapidly and because the best or the most recent data was a
25 five-year product, which is quite outdated, those linear

10:41:33

1 trends were going to take us to a majority-minority CVAP
2 district.

3 MR. DUNN: Thank you, Dr. Barreto.

4 Pass the witness.

10:41:50 5 JUDGE GUADERRAMA: Mr. Thompson.

6 MR. THOMPSON: May I proceed, Your Honor?

7 JUDGE GUADERRAMA: Yes.

8 MR. THOMPSON: For the court reporter, I'm Will
9 Thompson.

10:41:56 10 **REBUTTAL CROSS-EXAMINATION**

11 BY MR. THOMPSON:

12 **Q.** Dr. Barreto, good to see you.

13 **A.** Good afternoon -- or good morning.

14 **Q.** I think you are right. You were just talking with
10:42:22 15 Mr. Dunn, if I understood you correctly, about whether or
16 not you thought it was appropriate to control for partisan
17 affiliation. Do you remember that?

18 **A.** Yes.

19 **Q.** And I think you said you thought it was not
10:42:30 20 appropriate to control for partisan affiliation in the
21 analysis you wanted to do?

22 **A.** In the ecological inference models of general
23 elections I don't believe it's appropriate.

24 **Q.** So -- I'm not trying to get in a fight with you about
10:42:41 25 that. I just want to make sure I nail down exactly what

1 you did and what you didn't do.

2 So your analysis would not answer the question whether
3 partisan affiliation best explains divergent voting
4 patterns among minority and White citizens; is that fair?

10:42:57 5 **A.** The ecological inference models tell us whether
6 Blacks, Hispanics, and Anglos are voting for opposite
7 candidates or the same candidates.

8 **Q.** So I appreciate that. I just want to get it nailed
9 down. I don't think we quite got the answer to my
10:43:12 10 question.

11 So your analysis shows that there are these divergent
12 voting patterns, right?

13 **A.** Yes.

14 **Q.** It doesn't tell us whether partisan affiliation is the
10:43:20 15 best explanation for these divergent voting patterns; is
16 that right?

17 **A.** It doesn't tell us any of the underlying variables
18 such as: age, education, nativity, socioeconomic status.
19 It is what we refer to as a bivariate model. It does not
10:43:36 20 include partisanship, but it doesn't include any of what
21 could be the underlying factors explaining vote choice.

22 **Q.** You are not a lawyer, right?

23 **A.** No.

24 **Q.** So if I told you that *LULAC v. Clements*, a Fifth
10:43:52 25 Circuit *en banc* case, requires this Court to ask whether

1 partisan affiliation best explains the divergent voting
2 patterns among minority and White citizens --

3 THE REPORTER: I'm sorry. Could you start over
4 again, please.

10:44:11 5 MR. THOMPSON: I'm sorry. I was going too fast.

6 BY MR. THOMPSON:

7 Q. So if I told you that *LULAC v. Clements*, a Fifth
8 Circuit *en banc* case, requires this Court to ask whether
9 partisan affiliation best explains the divergent voting
10:44:11 10 patterns among minority and White citizens, you wouldn't
11 have a reason to disagree with my understanding of that
12 case?

13 A. I am not offering a legal opinion on that case.

14 Q. Fair enough. You were just talking about your
10:44:23 15 rebuttal report with Mr. Dunn. Do you remember that?

16 A. Yes. Yes.

17 Q. We can bring it up, if you want. I believe you have
18 it in front of you. It's Plaintiffs' Exhibit 100.

19 A. I have it here.

10:44:33 20 Q. In Paragraph 2 you talk about something that you say
21 Dr. Alford contends. You said, "Dr. Alford contends that
22 Black and Latino voters in Tarrant County are not
23 politically cohesive because his analysis shows that they
24 supported different candidates in the 2014 Democratic
10:44:51 25 primary for Senate District 10." Do you see that?

1 **A.** Paragraph 3, yes.

2 **Q.** Oh, I'm sorry. Thank you for correcting me.

3 Did you hear Dr. Alford testify that he used the 2014
4 Democratic primary as an illustrative example of why
10:45:06 5 experts incorporate primary data, not to conclusively
6 establish whether cohesion exists?

7 **A.** I heard him say a lot of things, including --

8 **Q.** I'm sorry. Did you hear him say that?

9 **A.** I would have to look at the record to remember exactly
10:45:19 10 what he said because I heard him say a lot of things.

11 **Q.** That's fine. If you don't remember, don't worry about
12 it.

13 In Paragraph 7 of your rebuttal report I believe you
14 mentioned some homogenous precincts; is that right?

10:45:32 15 **A.** Yes.

16 **Q.** And so for the homogenous African-American precincts
17 you used the top 21 precincts that are 50 percent or more
18 Black; is that right?

19 **A.** I did.

10:45:43 20 **Q.** Okay. Paragraph 7 also says it provides an ecological
21 -- I'm sorry. That's not right.

22 Paragraph 7 also says that it provides ecological
23 regression results, not ecological inference results; is
24 that right?

10:45:55 25 **A.** That's correct.

1 Q. And Paragraph 7 looks at the 2020 general election; is
2 that right?

3 A. Yes.

4 Q. In that election Mr. Quintanilla ran as an
5 Independent, correct?

10:46:05

6 A. Yes.

7 Q. And in that same election Mr. Vasquez ran as a
8 Republican, right?

9 A. Yes.

10 Q. So if I understand your results correctly, you
11 concluded that Latino voters preferred Mr. Veasey, the
12 Democratic candidate, even when he was opposed by Latino
13 candidates not running as Democrats; is that right?

10:46:11

14 A. That's correct.

15 Q. So it's fair to say that, in your analysis, Latino
16 voters' preferences were not being driven by the race or
17 ethnicity of the candidates in the general election; is
18 that right?

10:46:26

19 A. In the general election?

20 Q. The election that you were analyzing in that
21 paragraph.

10:46:37

22 A. My conclusion was that in the general election
23 Mr. Veasey was their candidate of choice.

24 Q. Right. And the -- sorry. I think we're 100 percent
25 in agreement on what you said there.

10:46:49

1 You did not conclude that Latino voters in that
2 election preferred the Latino candidates?

3 **A.** They did not prefer the Latino candidates in that
4 election.

10:47:03

5 **Q.** So it would be fair to say that their choices in the
6 general election were not being driven by the race or
7 ethnicity of the candidates from whom they were choosing?

10:47:20

8 **A.** That's not at all what this paragraph concludes. To
9 look at what their choices are being driven by, we would
10 run a multivariate analysis where we would match candidate
11 policy issues, number of campaign appearances.

10:47:39

12 You can certainly run models of vote choice and what
13 drives, to use your word, their vote; but that's not how
14 this model was set up. And so it's not fair to draw that
15 conclusion.

16 **Q.** So that's not what you were -- that's not the analysis
17 you were doing, right?

18 **A.** I was just looking at whether or not a candidate of
19 choice emerged.

10:47:48

20 **Q.** Thank you. Now, Paragraph 10, same report, in that
21 election you are -- I'm sorry. You are looking at the
22 2018 Democratic primary in Paragraph 10, right?

23 **A.** That's correct.

10:48:05

24 **Q.** And in that election Mr. Quintanilla identified as a
25 Democrat, didn't he?

1 **A.** Yes.

2 MR. THOMPSON: All right. Thank you very much.
3 Pass the witness.

4 JUDGE GUADERRAMA: Mr. Dunn.

10:48:11

5 **REBUTTAL REDIRECT EXAMINATION**

6 BY MR. DUNN:

10:48:23

7 **Q.** Just one inquiry here on redirect. Dr. Barreto, in
8 all the disagreements we have aired out here in these last
9 few days between you and Dr. Alford, is there really any
10 dispute between the two of you of the existence of strong
11 racial -- racially polarized voting in Tarrant County in
12 the portion where Senate District 10 is located?

10:48:39

13 **A.** There is none. I conclude that there is racially
14 polarized voting, that Black and Hispanic voters are
15 cohesive. And I heard Dr. Alford say multiple times
16 yesterday that everyone knows that Black and Hispanic
17 voters are cohesive and vote Democrat and that Anglos vote
18 Republican. So I think it's a fairly well-established
19 fact among experts.

10:48:56

20 **Q.** Thank you, sir.

21 MR. DUNN: Pass the witness.

22 MR. THOMPSON: Nothing further, Your Honor.

23 JUDGE GUADERRAMA: All right.

10:49:04

24 Dr. Barreto, thank you for coming back. You are
25 excused.

1 MR. DUNN: That concludes the rebuttal evidence
2 from the plaintiffs.

3 JUDGE GUADERRAMA: Anything else from the State?

10:49:18

4 MR. SWEETEN: Nothing else, Your Honors, from the
5 State.

6 JUDGE GUADERRAMA: All right. So, Mr. Dunn and
7 whoever is going to be closing for the State, do you each
8 feel like, physically, we can go ahead and close today?

10:49:34

9 MR. DUNN: I believe so, Your Honor. I think we
10 are prepared to do that. I would ask, anyway, for just a
11 couple-hour recess, maybe come at lunch or noon or 1:00.
12 I don't know what time it is.

13 JUDGE GUADERRAMA: All right. Let me just check
14 with my visitors, because I live here.

10:49:46

15 Is that okay with the State?

16 MR. SWEETEN: Yes, Your Honor. We are ready now.
17 If the Court wants to come back in two hours, that's fine,
18 too.

10:49:57

19 JUDGE GUADERRAMA: All right. So it's going to
20 be 11:00. Let's be back at 1:00, and we'll hear closing
21 arguments at that time.

22 THE MARSHAL: All rise.

23 *(Proceedings adjourned at 10:50 a.m. and continued in*
24 *Volume 9.)*

25 *****

1 Date: February 7, 2022

2 **COURT REPORTER'S CERTIFICATE**

3 I, Laura Wells, certify that the foregoing is a
4 correct transcript from the record of proceedings in the
5 above-entitled matter.

6 /s/ Laura Wells

7 Laura Wells, CRR, RMR

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